

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

AMY AKIN,

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Plaintiff,

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v.

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Civil Action No. 16-30048-MGM

NOAH PACK, MATTHEW TROMBLEY,

\*

And ROBIN A. WHITNEY,

\*

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Defendants.

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MEMORANDUM AND ORDER REGARDING REPORT AND  
RECOMMENDATION ON DEFENDANTS' MOTIONS  
FOR SANCTIONS, INCLUDING DISMISSAL, FOR PLAINTIFF'S  
FAILURE TO COOPERATE IN DISCOVERY

(Dkt. No. 83)

July 28, 2017

MASTROIANNI, U.S.D.J.

On March 16, 2016, Plaintiff, Amy Akin, filed suit alleging Massachusetts State Troopers Noah Peck and Matthew Trombley and Detective Lieutenant Robin Whitney ("Defendants") subjected her to an unreasonable public strip search during a police stop on October 17, 2013 in violation of her rights under the Fourth and Fourteenth Amendments to the United States Constitution. (Dkt. No. 1.) Plaintiff was represented by counsel from the time of filing through December 12, 2016. Since that time, Plaintiff has proceeded *pro se*. Following a series of discovery delays caused by Plaintiff's failure to cooperate with requests for interrogatory responses, document requests, and noticed depositions, Defendants filed motions seeking dismissal as a sanction for

Plaintiff's discovery compliance failures. (Dkt. Nos. 59, 73.) Those motions were referred to Magistrate Judge Robertson for a Report and Recommendation ("R&R"). On April 19, 2017, Judge Robertson ordered Defendants to "make their best efforts to serve copies of their [m]otions" on Plaintiff, together with an Order to Show Cause issued by Judge Robertson. (Dkt. No. 77.) Plaintiff responded to the Order to Show Cause by a letter docketed on May 12, 2017. (Dkt. No. 82.)

On July 6, 2017, Judge Robertson issued her R&R, advising this court to deny Defendants' motions "without prejudice to their renewal if Plaintiff fails to participate in reasonable discovery in the near future." (Dkt. No. 83, R&R 10.) She also informed the parties of her intent to issue an order governing future discovery if this court does not dismiss the case. (*Id.* at 2.) The parties had fourteen days from the date they were served with the R&R to file their objections. No objections have been filed, though on July 17, 2017 Defendants filed a motion seeking clarification as to new deadlines for Plaintiff's cooperation with discovery. (Dkt. No. 84.) That same day a docket entry was made documenting the return, as undeliverable, of mail sent to Plaintiff by the clerk's office on April 19, 2017. This raises the question as to whether Plaintiff has actually received a copy of the R&R, however, as it is the Plaintiff's obligation to keep the clerk's office updated with her current mailing address, the court finds no reason to delay its review of the R&R.

The court has reviewed the R&R, as well as Defendants' original motions, and shares the concerns identified by Defendants and Judge Robertson regarding Plaintiff's failure to comply with discovery deadlines. At the same time, the court shares Judge Robertson's concerns that Plaintiff, as a *pro se* litigant, may not have fully understood her obligation to comply with discovery obligations and deadlines. For these reasons, and upon *de novo* review, the court hereby ADOPTS Judge Robertson's R&R.

Consistent with her R&R, Judge Robertson will issue deadlines for Plaintiff's compliance with discovery obligations. Once these new deadlines are available, Defendants are ordered to use their best efforts to serve a copy of this order, the R&R, and the new deadlines on Plaintiff. The

court advises Plaintiff that if she wishes to continue prosecuting this lawsuit she must comply with the new discovery deadlines. Should she encounter any difficulties with compliance she must communicate these difficulties to Defendants and the court as early as possible. In the event Plaintiff fails to comply with the new deadlines, Defendants may renew their Motion for Sanctions and the court advises Plaintiff that any future failures to comply with discovery deadlines may result in dismissal of this case.

It is So Ordered.

/s/ Mark G. Mastroianni  
MARK G. MASTROIANNI  
United States District Judge